



RESTITUTION ISSUES IN YOUTH COURT

Brenda C. Locke
OSPD Youth Defense
Resource Counsel

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SUMMARY




Agenda


- What is Restitution
- Victim
- Authority to Assess Restitution
- Who Can Be Ordered to Pay Restitution
- The Restitution Hearing
- Civil Judgments
- Brainstorming
- Questions

This slide is for informational purposes only and is not intended to be used as a legal document.

What is Restitution?



99-37-1(d) "Victim" shall mean any person whom the court determines has suffered pecuniary damages as a result of the defendant's criminal activities. ...



Court's Authority to Assess Restitution

MISSISSIPPI CODE 1972 Annotated

Provisions Relating to Restitution

Titles 53 to 57

Who Can Be Ordered to Pay Restitution?

Child

Parent(s)

The Restitution Hearing

Part of the disposition hearing for the child.

Rules of Evidence Do Not Apply - hearsay is admissible.

Amount of restitution is to be determined by the judge.


Any proof of loss on behalf of the victim must be made part of the record.

Child & Parents have due process rights.

Civil Judgements

- 43-21-619(3) Allows for orders under this section to constitute a civil judgement and may be enrolled on the judgement rolls in the office of the circuit clerk of the county where the order was entered.

Any Questions?



Thank you

Brenda C. Locke
OSPD Youth
Defender Resource
Counsel

228-219-3549
block@ospd.ms.gov



Agenda

**What is Restitution
Victim**

Authority to Assess Restitution

Who Can Be Ordered to Pay Restitution

The Restitution Hearing

Civil Judgments

Brainstorming

Questions

What is Restitution?




§ 99-37-1. Definitions

(c) “Restitution” shall mean full, partial or nominal payment of pecuniary damages to a victim.

Pecuniary Damages

99-37-1(b) "Pecuniary damages" shall mean all special damages, but not general damages, which a person could recover against the defendant in a civil action arising out of the facts or events constituting the defendant's criminal activities and *shall include, but not be limited to, the money equivalent of property taken, destroyed, broken or otherwise harmed, and losses such as medical expenses.*



Restitution in youth court
cannot exceed the actual
damages caused by the
child.

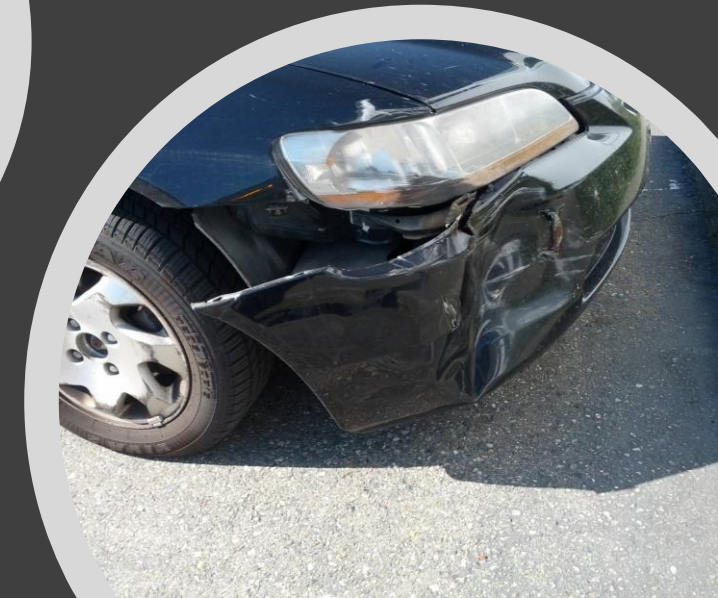


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99-37-1(d) “Victim” shall mean any person whom the court determines has suffered pecuniary damages as a result of the defendant's criminal activities. ...

Who is the victim?

- ❖ Person physically injured.
- ❖ Person who suffered loss of their property or damage to their property.
- ❖ Insurance company.



In Interest
of B.D.
720 So.2d
476 (1998)

It is clear under the testimony of the restitution hearing that the owner of that property suffered loss to the extent of the insurance deductibles and the carrier suffered to the extent of the payments of the claims. Although not controlling, it is helpful to note that Miss. Code Ann. §99-37-1(1994), mentioned earlier, does specifically define “victim” for the purpose of that act to include “any person whom the court determines has suffered pecuniary damages as a result of the defendant's criminal activities.”

We find that
an **insurance company**
may be a “victim” under
§43-21-619.”

In Interest of B.D., 720
So.2d 476 (1998)





We further find that any victim seeking restitution under §43-21-619 should be made a party to the restitution proceeding, and that any proof of loss on behalf of the victim must be made part of the record.

In Interest of B.D., 720 So.2d 476 (1998)



MISSISSIPPI CODE 1972
Annotated

Parks and Recreation
Planning, Research and Development

Titles 55 to 57

Court's Authority to Access Restitution



Child in Need of Supervision Proceedings



MS Code §43-21-607 – Child in Need of Supervision Disposition

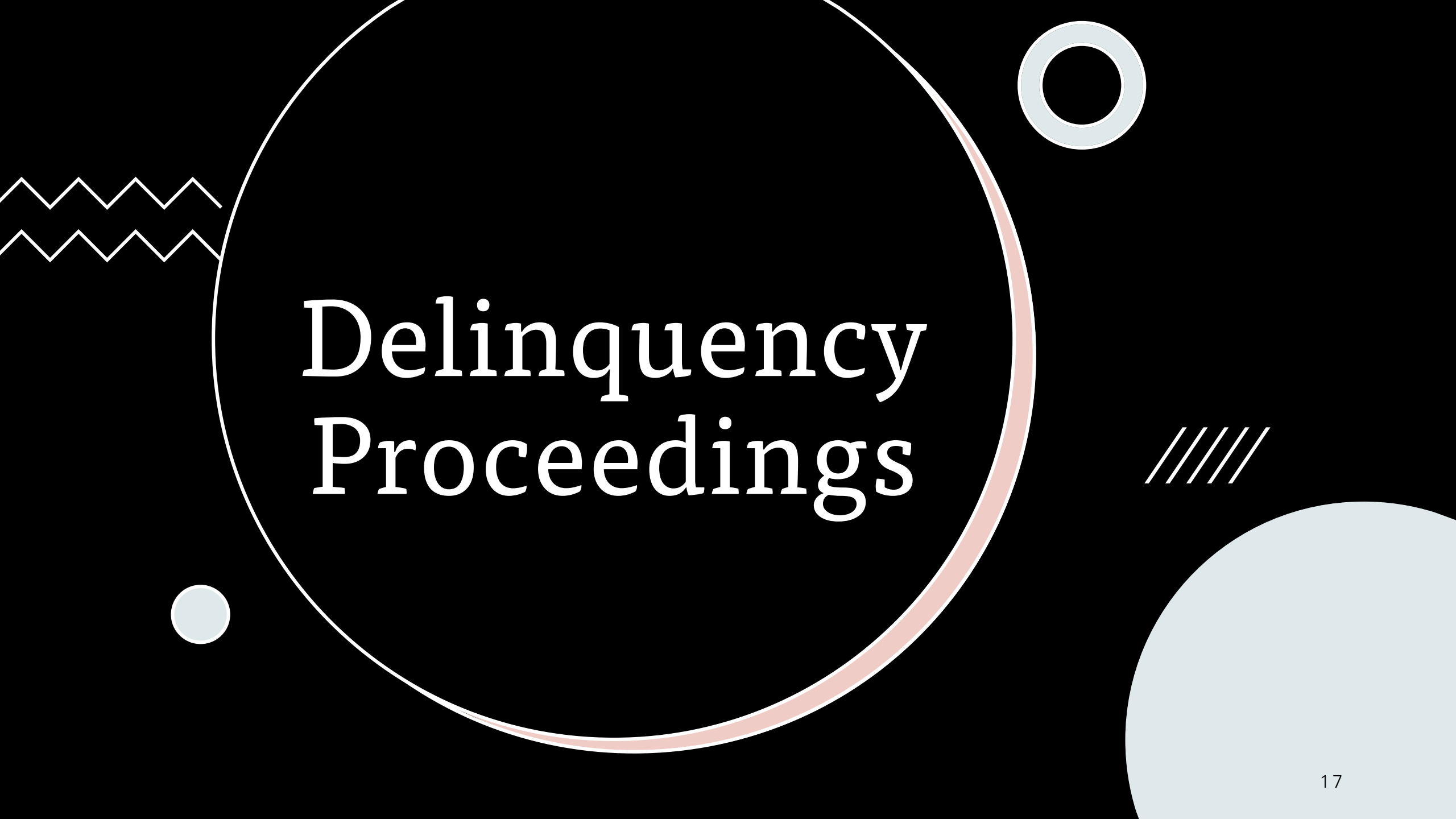
MS Code §43-21-607(e)

Order terms of supervision which may include participation in a constructive program of service or education or restitution not in excess of actual damages caused by the child to be paid out of his own assets or by performance of services acceptable to the parties and reasonably capable of performance within one (1) year;

MS R YCP Rule 27

Child in Need of Supervision Proceedings:

- ❖ **(b)(1)(v)** parents, guardians or custodians who exercise parental custody or control of a child who has willfully or maliciously caused personal injury or damaged or destroyed property to pay damages or restitution and to participate in a counseling program or other suitable family treatment program for the purpose of preventing future occurrences pursuant to section 43-21-619(2) of the Mississippi Code;



Delinquency Proceedings



MS Code §43-21-605 – Delinquency Dispositions

MS Code §43-21-605(b)

Place the child in the custody of the parents, a relative or other persons subject to any conditions and limitations, including *restitution*, as the youth court may prescribe;



MS Code §43-21-605(c)

(c) Place the child on probation subject to any reasonable and appropriate conditions and limitations, including restitution, as the youth court may prescribe;

MS Code §43-21-605(e)

Order terms of supervision which may include participation in a constructive program of service or education or civil fines not in excess of Five Hundred Dollars (\$500.00), or restitution not in excess of actual damages caused by the child to be paid out of his own assets or by performance of services acceptable to the victims and approved by the youth court and reasonably capable of performance within one (1) year;



MS R YCP Rule 27

Delinquency Proceedings:

❖ (a)(1)(vii) parents, guardians or custodians who exercise parental custody or control of a child who has willfully or maliciously caused personal injury or damaged or destroyed property to pay damages or restitution and to participate in a counseling program or other suitable family treatment program for the purpose of preventing future occurrences pursuant to section 43-21-619(2) of the Mississippi Code;

Who Can Be Ordered to Pay Restitution?

Child

Parent(s)

Child

- ❖ restitution not in excess of actual damages caused by the child
- ❖ to be paid out of his own assets or by performance of services acceptable to the victims and approved by the youth court and reasonably capable of performance within one (1) year;



Parent(s)

- ❖ The youth court may order the parents, guardians or custodians *who exercise parental custody and control of a child who is under the jurisdiction of the youth court ...*



Parent(s)

- and who has willfully or maliciously caused personal injury or damaged or destroyed property
- to pay such damages or restitution through the court to the victim in an amount not to exceed the actual loss and to enforce payment thereof.



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Revisit In re B.D.

Parents, without any showing of their own fault, can be held liable for their child's acts

HOWEVER, the youth court must make a specific finding, on the record as to who exercises parental custody and control.

Failure to establish who had parental custody and control of the adjudicated minor before ordering restitution against the parents was plain error.



The Restitution Hearing

Part of the disposition hearing for the child.

Rules of Evidence Do Not Apply – hearsay is admissible.

Amount of restitution is to be determined by the judge.

Any proof of loss on behalf of the victim must be made part of the record.

Child & Parents have due process rights.

The Petition is Important

- ❖ Petition must be written with the same specificity as a criminal indictment.
- ❖ Value must be included in larceny petition; Petition not fatally defective if value is left out of malicious mischief petition.
- ❖ Make sure all the elements are included in the petition. Why is that important. Restitution can't be more than was plead in the petition and child was adjudicated delinquent for

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Brainstorming

What are some ways that you can show
the value of property?



Financially Able to Pay

- 43-21-619(1) Allows the court to order financially able parents to pay for expenses of the child. Including medical treatment, attorney's fees, court costs and others determined by the court.

- 43-21-105(aa) "Financially able" means a parent or child who is ineligible for a court-appointed attorney.



Civil Judgements

- 43-21-619(3) Allows for orders under this section to constitute a civil judgement and may be enrolled on the judgement rolls in the office of the circuit clerk of the county where the order was entered.

Civil Judgements

- 43-21-261(8) & (9) Allows the names and addresses of juveniles in specific circumstances to be released to the public and not held confidential.



Things I'd like to know that have nothing to do with Restitution!

- ❖ Does your youth court charge the child or their parent for ankle monitors when ordered to wear one by the court? Do they use a private probation company?
- ❖ Does your court utilize the services of debt collection agencies to collect fines, fees or restitution assessed to the child or parent?





Jail Removal of kids charged as adult from adult detention center to youth detention facilities.



The End

Thank you

Brenda C. Locke
OSPD Youth
Defender Resource
Counsel

228-219-3549

block@ospd.ms.gov